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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DANTE VALVE COMPANY, a
12 California corporation,
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14 Plaintiff,
15 v.
16 REPUBLIC BRASS SALES, INC., a
17 California corporation; HAWK VALVE,
18 INC., a Florida corporation; and DOES 2
through 200, inclusive,
Defendants.

Case No.: 17-cv-2582-AJB-WVG

**ORDER GRANTING PLAINTIFF'S
MOTION SEEKING LEAVE TO
AMEND**

(Doc. No. 28)

19 Before the Court is Plaintiff Dante Valve Company's motion for leave to file a
20 Second Amended Complaint. (Doc. No. 28.) Defendants Republic Brass Sales, Inc. and
21 Hawk Valve, Inc. filed separate oppositions to the SAC, to which Dante responded
22 separately. Pursuant to Civil Local Rule 7.1.d.1, the Court finds the matter suitable for
23 determination on the papers and without oral argument. Accordingly, the May 31, 2018
24 motion hearing date is **VACATED**. For the reasons set forth below, the Court **GRANTS**
25 Plaintiff's motion.

26 **I. BACKGROUND**

27 Dante manufactures and sells valves which are sold and used for various industrial
28 and military applications. (Doc. No. 28 at 4.) Republic and Hawk refurbish, resell, and

1 distribute valves for the same purpose. (*Id.*) Authorized distributors are allowed to order
2 and resell Dante’s valves to third parties. (*Id.*) Neither Republic nor Hawk are or ever have
3 been authorized distributors for Dante, but they have allegedly been selling counterfeit
4 Dante valves by refurbishing them and characterizing them as brand-new. (*Id.*)

5 Dante alleges that its valves adhere to a high standard of reliability and continual
6 performance. (Doc. No. 28 at 4–5.) Dante alleges that Republic’s and Hawk’s counterfeit
7 valves do not comply with Dante’s performance standards. (*Id.* at 5.) Dante also alleges
8 that the counterfeit valves carry with them a high risk of property damage, serious bodily
9 injury, and possibly death. (*Id.*) Dante is further worried the high failure rates of the
10 counterfeit valves might damage Dante’s reputation and brand value. (*Id.*)

11 Dante became aware of Republic and Hawk’s business practices around May 2015
12 when Republic tried to sell a counterfeit valve to third-party BAE Systems, Inc. (*Id.*)
13 According to Dante, “the valve Republic attempted to sell was approximately twenty-years
14 old, was improperly refurbished by Hawk, and sold for a use for which the valve was never
15 intended.” (*Id.*) “The valve in question also included a counterfeit Dante tag, with
16 fabricated information regarding the part number and the serial number of the valve.” (*Id.*)
17 Dante discovered the valve was a counterfeit product when BAE contacted Dante to ask
18 questions relating to the specifications of the valve based on the information displayed on
19 the fabricated tag. (*Id.*)

20 Soon after filing its complaint, Defendants filed motions to dismiss the initial
21 complaint, in response to which Dante filed an amended complaint. (Doc. No. 28 at 4.)
22 Dante wishes to file a Second Amended Complaint (“SAC”) in order to clarify certain
23 points, and allege sufficient facts regarding other acts of counterfeiting, its trademarks, and
24 to establish scienter. (Doc. No. 33 at 8; Doc. No. 34 at 8.)

25 II. LEGAL STANDARD

26 Federal Rule of Civil Procedure 15(a) governs leave to amend prior to trial. A party
27 may amend its pleading once as a matter of course within 21 days after serving it; or, if the
28 pleading is one requiring a response, within 21 days after service of the responsive pleading

1 or motion. Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only
2 with the opposing party’s written consent or the court’s leave. The court should freely give
3 leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Five factors are taken into
4 account to assess the propriety of a motion for leave to amend: (1) bad faith, (2) undue
5 delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether the
6 plaintiff has previously amended the complaint.” *Desertrain v. City of L.A.*, 754 F.3d 1147,
7 1154 (9th Cir. 2014) (quoting *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)).
8 These five factors do not “merit equal weight,” and “it is the consideration of prejudice to
9 the opposing party that carries the greatest weight.” *Eminence Capital, LLC v. Aspeon,*
10 *Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). “Absent prejudice, or a strong showing of any
11 of the remaining factors, there exists a *presumption* under Rule 15(a) in favor of granting
12 leave to amend.” *Id.* (emphasis in original).

13 The grant or denial of leave to amend is in the Court’s discretion. *Swanson v. U.S.*
14 *Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). “In exercising this discretion, a court must
15 be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather
16 than on the pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.
17 1981). Consequently, the policy in favor of granting leave to amend is applied with extreme
18 liberality. *See Foman v. Davis*, 371 U.S. 178, 181–82 (1962).

19 III. DISCUSSION

20 1. Bad Faith

21 A Defendant can show a Plaintiff is acting in bad faith by seeking to prolong the
22 litigation by adding new but baseless theories. *See Griggs v. Pace Am. Grp., Inc.*, 170 F.3d
23 877, 881 (9th Cir. 1999). Aside from Republic’s objection, Dante argues Federal law
24 permits Plaintiffs to plead allegations and facts in a SAC based on “information and belief.”
25 (Doc. No. 34 at 6.) Because Dante is not adding new theories to the SAC, but alleging
26 additional information and facts to clarify theories previously alleged in the original
27 complaint, there are no facts showing Dante is acting in bad faith. (Doc. No. 28. at 4.)
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1 **2. Undue Delay**

2 The Court in *Cureton v. Nat'l Collegiate Athletic Ass'n* cited its reasons for why
3 Plaintiff's delay was undue: (a) the motion was filed three years after the complaint was
4 filed, (b) the factual information in the proposed amendment was known two and a half
5 years before Plaintiff sought to amend, (c) damage to judicial efficiency, and (d) the interest
6 in the finality of the proceedings would be compromised by the amendment. *See Cureton*
7 *v. Nat'l Collegiate Athletic Ass'n*, 252 F.3d 267, 273–74 (3d Cir. 2001).

8 Republic argues in its opposition that Dante is unjustifiably delaying the litigation
9 process because Dante had knowledge of the factual information in the proposed
10 amendment and could have filed the amended pleading at the inception of the case, instead
11 of eight months after the case was initiated. (Doc. No. 31 at 4.) Dante fails to provide a
12 rebuttal to Republic's specific argument, however, Dante's initial amended complaint was
13 filed within three days of the notice of removal to federal court. A period of eight months
14 when compared to three years does not seem like an unreasonable delay, and Dante's initial
15 amended complaint was filed timely, and in accordance with Rule 15(a).

16 Additionally, it is difficult to justify damage to judicial efficiency, or a compromise
17 of the finality of the proceedings when discovery has not commenced, the parties have not
18 exchanged initial disclosures, and no other substantive activity related to trial proceedings
19 has taken place. (Doc. No. 28 at 7.) Thus, the Court finds no showing of undue delay.

20 **3. Prejudice to the Opposing Party**

21 Dante alleges there is no prejudice to defendants because the litigation is at a very
22 early stage, no discovery has commenced, and no trial or related deadlines have been set.
23 (Doc. No. 34 at 7.) Defendants, however, argue there is prejudice because they will be
24 forced to file a third motion to dismiss without ever having its first two motions heard by
25 the Court. (Doc. No. 32 at 3; Doc. No. 31 at 4–5.)

26 In *Jackson v. Bank of Hawaii*, the District Court determined the amendment was
27 prejudicial because Plaintiff sought to “advance different legal theories and require proof
28 of different facts.” *See Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990).

1 Here, Dante is not advancing alternate legal theories and the proposed SAC merely
2 contains additional supporting, but not different, facts not alleged in the motions to dismiss.
3 (Doc. No. 34 at 6.)

4 Further, in deciding whether prejudice to the opposing party exists, courts also
5 evaluate whether the amendment would “require the opponent to expend significant
6 additional resources to conduct discovery and prepare for trial.” *See Agerbrink v. Model*
7 *Serv. LLC*, 155 F. Supp. 3d 448, 454 (S.D.N.Y. 2016).

8 Although neither discovery nor pre-trial motions have commenced, Hawk argues
9 filing a third motion to dismiss would be burdensome because its jurisdiction motion has
10 yet to be heard, and the proposed amendments do not address this issue. (Doc. No. 32 at 4.)
11 However, if required to file a third motion to dismiss, Hawk will not be required to expend
12 *significant* additional resources to do so since the core legal theories upon which the initial
13 amended complaint is based on have not been altered by the SAC. Thus, for the
14 aforementioned reasons, the court finds a weak showing of prejudice to the opposing party.

15 **4. Futility of Amendment**

16 A proposed amendment is futile if no set of facts can be proved under the amendment
17 that would constitute a valid and sufficient claim or defense. *See Baker v. Pacific Far East*
18 *Lines, Inc.*, 451 F. Supp. 84, 89 (N.D. Cal. 1978); *see also Miller v. Rykoff-Sexton, Inc.*,
19 845 F.2d 209, 214 (9th Cir. 1988).

20 Republic argues that the SAC is futile because Dante attempts to resurrect its claims
21 for relief against Defendants based on minor discrepancies relating to the date of purchase
22 of registered trademarks. (Doc. No. 31 at 5.) Dante responds that the “date the trademark
23 was obtained is not a required element of such a claim.” (Doc. No. 34 at 6.) The Court finds
24 Republic failed to make a sufficient showing of futility based on this claim because the
25 facts, or lack thereof in this instance, support Dante’s claim for trademark infringement.

26 **5. Previously Amended Complaint**

27 Per Rule 15(a), “a party may amend its pleading once as a matter of course. . . .”
28 Fed. R. Civ. P. 15(a)(1). And if justice so requires, the Court has a liberal standard to uphold


1 in deciding when to grant leave to amend. *See Owens v. Kaiser Found. Health Plan, Inc.*,
2 244 F.3d 708, 712 (9th Cir. 2001). Here, Dante asserts that Dante has never been granted
3 leave to amend by this Court, and that Dante availed itself on its right to amend as a matter
4 of course, which is entirely different than being granted leave to amend. (Doc. No. 33 at
5 6–7.) The Court agrees with Dante’s proposition to grant leave because the initial
6 complaint was only amended once as a matter of course.

7 **IV. CONCLUSION**

8 In sum, the Court finds Defendants will not be prejudiced by permitting Plaintiff to
9 amend his complaint. Because the Court favors granting leave to amend freely, and the
10 factors weigh in favor of amendment, the Court **GRANTS** Plaintiff’s motion for leave to
11 amend. (Doc. No. 28.) Plaintiff must file and serve his second amended complaint as a
12 stand-alone document on or before **May 31, 2018**. Accordingly, Hawk’s and Republic’s
13 dismissal motions are **DENIED AS MOOT** without prejudice. (Docs. No. 17, 19.)

14 **IT IS SO ORDERED.**

15 Dated: May 14, 2018

16 
17 Hon. Anthony J. Battaglia
18 United States District Judge
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